

The Supreme Court: October Term 2003

Tenth Circuit Judicial Conference
Park City, Utah

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I. Criminal procedure

A. Fourth Amendment

United States v. Banks, 123 S.Ct. 521 (2003). Law enforcement officers executing a search warrant for illegal drugs did not violate the Fourth Amendment and 18 U.S.C. §3109 when they forcibly entered a small apartment in the middle of the afternoon 15 to 20 seconds after knocking and announcing their presence.

Maryland v. Pringle, 124 S.Ct. 795 (2003). In a case in which drugs and a roll of cash are found in a passenger compartment of a car with multiple occupants, and all deny ownership, the police had probable cause to arrest any individual in the car.

Groh v. Ramirez, 124 S.Ct. 1284 (2004). Search warrant that utterly failed to describe the persons or things to be seized was invalid on its face, notwithstanding that requisite particularized description was provided in search warrant application. Residential search that was conducted pursuant to this facially invalid warrant could not be regarded as "reasonable," though items to be seized were described in search warrant application, and though officers conducting search exercised restraint in limiting scope of search to that indicated in application.

Thornton v. United States, 124 S.Ct. 2127 (2004). When the police arrest a recent occupant of a vehicle outside of the vehicle, they may search the vehicle regardless of whether the arrestee was actually or constructively aware of the police before getting out of the vehicle.

Hiibel v. Sixth Judicial Dist. Court of Nevada, 124 S.Ct. ____ (June 21, 2004). A state statute requiring a person to identify him or herself when stopped by a police officer does not violate his or her right to privacy as protected under the Fourth Amendment.

B. Fifth Amendment

Missouri v. Seibert, 124 S.Ct. ____ (June 28, 2004). If the police intentionally question a suspect without administering Miranda warnings and receive a statement, a subsequent repeating of that statement by the suspect after the administration of Miranda warnings is not admissible.

United States v. Pattane, 124 S.Ct. ____ (June 28, 2004). The failure to give a suspect Miranda warnings does not require suppression of physical evidence derived from the suspect's unwarned but voluntary statement.

C. Sixth Amendment – confrontation clause

Crawford v. Washington, 124 S.Ct. 1354 (2004). An out-of-court statement, when the declarant is not available, cannot be used against a criminal defendant if it is used for the truth of the matter asserted, there was not the opportunity for cross-examination, and it is testimonial.

D. Sixth Amendment – Apprendi issues

Blakely v. Washington, 124 S.Ct. ____ (June 24, 2004). It violates the Sixth Amendment for a judge to impose an “upward departure,” but within the maximum sentence, without having a jury make the fact-finding to justify an upward departure. Any factors that lead to a sentence greater than that which could be imposed based on the jury's finding of guilt must be proven to the jury beyond a reasonable doubt.

Schiro v. Summerlin, 124 S.Ct. ____ (June 24, 2004). Ring v. Arizona, requiring juries in capital cases to find aggravating factors to impose a death sentence, does not apply retroactively.

II. Federalism

Frew v. Hawkins, 123 S.Ct. 899 (2004). If a state enters into a consent decree, state officers may be sued to enforce the agreement barred by sovereign immunity.

Tennessee v. Lane, 124 S.Ct. 1978 (2004). State governments may be sued for violating Title II of the Americans with Disabilities Act -- which prohibits

government discrimination against people with disabilities in government programs, services, and activities --for claims concerning discrimination with regard to the fundamental right of access to the courts.

Tennessee Student Assistance Corp. v. Hood, 124 S.Ct. 1905 (2004). Bankruptcy Court's exercise of its in rem jurisdiction to discharge state-held student loan does not infringe state sovereignty, and thus debtor's initiation of adversary proceeding seeking hardship determination is not suit against state under Eleventh Amendment, and adversary proceeding seeking hardship determination is not rendered a suit against state for Eleventh Amendment purposes by fact that bankruptcy rules require service of summons and complaint against state.

III. First Amendment

A. Speech

Ashcroft v. American Civil Liberties Union, 124 S.Ct. ____ (June 29, 2004). The Child Online Protection Act, which requires that commercial websites containing sexually explicit material exclude minors, violates the First Amendment.

B. Religion

Locke v. Davey, 124 S.Ct. 1307 (2004). The First Amendment is not violated when a state, because of a state constitutional provision, refuses to allow its scholarships to be used by a student studying theology at a religiously affiliated university.

Elk Grove Unified School District v. Newdow, 124 S.Ct. 2301 (2004). Non-custodial father lacks standing to challenge as violating the Establishment Clause the words “under God” in the Pledge of Allegiance as recited in public schools.

IV. Elections

McConnell v. Federal Election Commission, 124 S.Ct. 619 (2003). Key

provisions Bipartisan Campaign Finance Reform Act of 2002 are constitutional, including prohibiting political parties from raising and spending soft money; preventing corporations and unions from engaging in broadcast advertisements for or against identifiable candidates 30 days before primary elections or 60 days before general elections. However, the prohibition of contributions by those 17 and younger is unconstitutional.

Vieth v. Jubelirer, 124 S.Ct. 1769 (2004). The plurality concludes that challenges to partisan gerrymandering are a non-justiciable political question.

V. Civil rights statutes

General Dynamics Land Systems v. Cline, 124 S.Ct. 1236 (2004). Discrimination against the relatively young is outside ADEA's protection, and employer therefore did not violate ADEA's prohibition against discrimination by eliminating health insurance benefits program for workers under 50 but retaining program for workers over 50.

Muhammad v. Close, 124 S.Ct. 1303 (2004). A plaintiff who wants to bring section 1983 action challenging only conditions, rather than fact or duration, of his confinement need not satisfy Heck v. Humphrey. A prisoner who was, but no longer is in administrative segregation, may bring a suit challenging the conditions without meeting the requirements of Heck v. Humphrey.

Pennsylvania State Police v. Suder, 124 S.Ct. 2342 (2004). To establish "constructive discharge" under Title VII, a plaintiff alleging sexual harassment must show that the abusive working environment became so intolerable that her resignation qualified as a fitting response. An employer may assert the Ellerth/Faragher affirmative defense to such a claim unless the plaintiff quit in reasonable response to an adverse action officially changing her employment status or situation, e.g., a humiliating demotion, extreme cut in pay, or transfer to a position in which she would face unbearable working conditions.

Sosa v. Alvarez-Machain, 124 S.Ct. ____ (2004). Federal government may not be sued under the Federal Tort Claims Act for torts that occurred in foreign countries.

Civil suits may be brought under the Alien Tort Claims Act for torts in violation of the law of nations for the type of violations that would have been actionable in 1789. Brief illegal detention did not meet this requirement.

VI. Civil liberties and the war on terrorism

Hamdi v. Rumsfeld, 124 S.Ct. ____ (June 28, 2004). The United States detain as an enemy combatant an American citizen apprehended in Afghanistan and brought to the United States, but the government must accord the individual a meaningful opportunity to contest the factual basis for that decision before a neutral decisionmaker.

Padilla v. Rumsfeld, 124 S.Ct. ____ (June 28, 2004). An American citizen arrested in the United States for a crime in the United States held as an enemy combatant must bring his challenge in the federal judicial district where he is held.

Rasul v. Bush, 124 S.Ct. ____ (June 28, 2004). United States courts have jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad in connection with hostilities and incarcerated at Guantanamo Bay.